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REPORTS

NOTES OF THE WEEK

An Odd Number on the Bench

The Guardian on November 28, reported a case in which a charge of driving without due care and attention came before a bench of only two justices who heard all the evidence but found themselves unable to agree as to the decision which should be given. In the chairman's own words "If we went out for an hour we could not arrive at a decision. We shall have to send it to another bench."

Fortunately another court, with a stipendiary magistrate, was sitting at the same time and the case was transferred to that court. The evidence was given afresh and the magistrate said at the conclusion that he would give the defendant the benefit of the doubt and he dismissed the information. Commenting on the earlier hearing the stipendiary magistrate said "There should have been three justices. I shall find out why there were not."

On this occasion the parties were lucky in not having to come back on another occasion to have the case reheard. We appreciate fully that emergencies do arise which make it impossible at short notice to avoid sitting with only two justices, but the possibility of disagreement between them is always present. If one justice from a bench of five is unable to sit it is probably much better for one of the remaining four to stand down and so leave an odd number. When three are reduced by unforeseeable circumstances to two either no cases can be heard or the risk of disagreement must be taken. The important thing is that all possible steps should be taken to avoid the even-numbered bench and we have no doubt that rotas are arranged on this basis and that when emergencies arise every effort is made, when only two are left, to find a third justice to complete the bench.

The Penalty as Indicating the Seriousness of the Offence

People experienced in the work of the criminal courts know that when a court is considering how a convicted person should be dealt with, the gravity of the offence is only one of the factors which have to be taken into consideration. We refer to this matter because of a report in the *Cambridge Independent Press and Chronicle* of November 27, which records that an advocate appearing for a defendant charged with dangerous driving, who had previously been convicted of a like offence, said in mitigation that the defendant "had been fined only £5 for his other dangerous driving offence which might be an indication of its seriousness." This is a point which an advocate can be expected to make but the court to whom such a plea is addressed will remember that they know only that the fine was £5 and have no knowledge of the circumstances of the earlier case or of the reasons which prompted the court concerned to impose that fine.

But the matter does serve to remind courts that such pleas are made and that the normal practice is that, in the absence of mitigating circumstances, serious offences are followed by substantial penalties. If undue leniency is shown to a defendant on one occasion the result may be that, by pleading that the penalty so imposed indicated truly the nature of the earlier offence, he secures unduly lenient treatment on the subsequent occasion as well.

Motor Car and Trailer Two Vehicles not one Entity

A report from a local paper sent to us by a correspondent shows that mistakes can happen even when there has been a clear High Court decision on a particular point. A defending advocate successfully took the point that a summons charging the use of a motor car and a trailer on a road without adequate insurance should not have been issued in that form and was bad, there being no such offence known to the law. The report states that the summons was amended to delete reference to the trailer. The case was heard on the amended summons and the defendant was found not guilty.

The point was expressly covered by the case of *Rogerson* v. *Stephens* (1950) 114 J.P. 372; [1950] 2 All E.R. 144. Lord Goddard, then Lord Chief Justice, in his judgment said that there is no doubt that a motor car and trailer attached are not one vehicle but two. He added that s. 35 (1) of the Road Traffic Act, 1930, deals with the use of a motor vehicle and not with the use of a motor vehicle and trailer and that the information disclosed an offence which is not known to the law. Humphreys, J., in his judgment said that he thought that the justices ought to have told the appellant that unless the words "and trailer" were struck out they would have to consider whether the use of "a motor car and trailer" was an offence. Words which are mere surplusage may be disregarded unless they have misled the party summoned, in which case the justices may not dismiss the information but may adjourn. The learned Judge was here referring to the provision now to be found in s. 100 of the Magistrates' Courts Act, 1952.

We call attention to the point here as we feel that if this mistake has been made in one case other police officers responsible for the form in which process is issued (and justices' clerks who have to consider such matters when informations are laid) may be glad to be reminded of *Rogerson* v. *Stephens*, *supra*.

Road Casualties in Derbyshire

The Derbyshire constabulary publish an elaborate bulletin giving a detailed analysis, with figures, graphs and diagrams, of the road casualties in the county. The bulletin for 1958 gives the figures for that year and compares them with those for 1957 and 1956. The numbers fatally injured in those three years were 97, 70 and 93 respectively. The numbers of persons injured were 3,131, 3,162 and 3,231 respectively. In the foreword the chief constable makes two appeals. To parents and guardians of children he says: "please teach your child the safe way to cross the road before he sets off for his first day at school—this is your responsibility. We will help afterwards." To drivers and riders of vehicles he says: "don't be bad mannered and impatient."

In the summary of fatal accidents during 1958, it is noted that of the 34 pedestrians who received fatal injuries 11 were children under 16 and 16 were old people aged 65 and over, 32 *per cent.* and 47 *per cent.*, respectively, of the total. Attention is called to the advice of the Highway Code "Children are in special danger—particularly those under five and those who cycle. Protect them and train them in road safety. Old people may react slowly. Give them great consideration."

The advice given in the Highway Code is not just a counsel of perfection. It is advice to road users to behave sensibly, courteously and with reasonable consideration for others. In the words of the Derbyshire bulletin: "if every road user in Derbyshire had followed the advice contained in the Highway Code this annual bulletin need never have been compiled."

We do not know how widely this bulletin is circulated. Great trouble must have been taken to produce it and the cost is probably not negligible. If enough people study it and ponder over the facts which it gives, some improvement in road behaviour may result.

The Pink Zone and Thereafter

It was claimed that "London's 'Pink Zone' plan was still going well"—so it was stated in a Ministry of Transport press notice dated December 8, 1959. This press notice reported statements made by the Minister, who said that "traffic is heavy, but it is moving much faster and more smoothly compared with a year ago." He added that results in the first two days were so good that motorists were tempted to come back into the zone and to park in side streets. This blocking of side streets prevented the passage of vehicles using them to escape from the central zone. Just over 1,000 cars which were causing obstruction were removed by the police in six days, most of the removing being on Friday and on Saturday evening.

Figures attached to the press notice showed that although four of the special parks arranged in connexion with the pink zone were used adequately, 12 others were hardly used, some not at all. The four which were used were at Constitution Hill, Horse Guards Parade, The Mall and Serpentine Road. The unused or little used ones were much further removed from the central zone.

The experience thus gained would seem to suggest that the streets in central London can be kept reasonably clear for moving traffic if the police are prepared to make the necessary effort and devote sufficient men to the task, but it would seem doubtful if such a concentrated effort could be continued indefinitely. Yet the result appears to have been well worth while, and this suggests that, as the problem has been shown to be not insoluble, it ought to and must be solved. This may well involve the co-operation of the courts who alone can bring home to motorists who seek to defeat the solution that to do so does not pay. Only when it is recognized, by experience, that free parking is almost certain to prove not only inconvenient because one's car is removed, but also very expensive because of the fines which have subsequently to be paid, will the persistent offender learn his lesson and the streets be reasonably free for traffic to move in.

There is no doubt that the provision of alternative parking places for vehicles barred from the pink zone has played an important part in achieving such success as has resulted from the experiment. If such alternative parking space, free or otherwise, is not going to be made available the task of trying to keep the traffic routes free is going to be very much more difficult.

Taking and Driving Away—the Passenger's Position

The case of *R.* v. *Stally* [1959] 3 All E.R. 814 has resolved any doubts which may have existed about the position of a person who accepts a ride in a motor car which has been unlawfully taken and driven away by the driver.

The case went to the Court of Criminal Appeal from the county of London sessions. One man had taken and driven away a car from the place where its owner had left it. Later the same evening the first man and another man had used the car on a number of journeys. Both were charged with taking and driving away the car. The passenger's defence was that although he got into the van shortly after it had been taken and driven away he was not present when it was so taken.

The jury were directed that if a vehicle has been unlawfully taken and driven away then anybody else, subsequently getting into the vehicle with the knowledge that the driver has taken it without the owner's consent is guilty of the offence. "Taking and driving away is a continuous offence. It goes on all the time the vehicle is being driven."

The Court of Criminal Appeal held that this was a misdirection. They said that a passenger could be guilty if he was a party to the taking, in the sense that the taking had been a joint enterprise, even though the passenger was not present when the vehicle was actually removed. But to justify a conviction the evidence must satisfy the court,

or the jury, that the passenger was in fact a party to the original taking. If, however, the passenger got subsequently into the vehicle knowing then that it had been wrongfully taken but without any previous knowledge that the driver was going to take it it is an inaccurate statement of the law to say that in those circumstances the passenger is guilty of taking and driving away. In *R.* v. *Stally, supra,* the conviction of the passenger was quashed.

Penal Practice in a Vocal Society

That "something must be done" about the increase in crime, particularly juvenile crime, is an opinion with which few would disagree, but it would seem that few are prepared for that something to be done at their expense. We are confirmed in this conclusion by reports in *The Guardian* of December 4 and 5, of a public inquiry into a proposal by the prison commissioners to convert a former barracks at Gosport in Hampshire into a detention centre for boys. A borough councillor told the inquiry, according to *The Guardian,* that feeling about the proposal was so high that people wanted to burn down the barracks on bonfire night. Yet counsel for the commissioners had stated earlier that an impossible situation existed in the county whereby boys from Portsmouth and Winchester could receive a detention centre sentence while boys from Gosport or Andover could not, and that by converting the existing building over £200,000 would be saved compared with the cost of constructing a new centre.

This is by no means the first occasion on which the prison commissioners have had to face the barrage of local opposition to their plans and we would imagine that such opposition is the rule rather than the exception. Yet reports from areas where the premises for the relatively new forms of penal treatment, such as detention centres and open prisons, have already been established indicate that their presence has little if any effect on the inhabitants at large. Local authorities at least are becoming aware of these facts, and it is becoming increasingly uncommon for them to be infected with what is often almost the hysteria of uninformed public opinion.

Bigger not necessarily Better

Speaking at the annual conference of Rating and Valuation Asociation, Mr. W. L. Dacey, secretary of the County Councils Association, suggested that the well-being of the country would be seriously affected if attention was not paid to the arguments of those who want local authorities to cover a larger area, based on the principle that to be bigger was to be better. These remarks followed an analysis of the numbers of members serving on county district councils. Of a total of 30,000 members about 10,500 are in districts of less than 15,000 population. So, if 15,000 should become the minimum figure to justify a continuance of a separate county district, England might lose one-third and Wales two-thirds of her representatives on the district councils. As Mr. Dacey pointed out the figure of 15,000 has now been discredited but even the 10,000 figure can mean the loss of one-fifth of these public representatives in England and more than half in Wales. As might be expected, Mr. Dacey also referred to the position of the smaller county councils and gave an example of the proposal in the report of the Local Government Commission of 1947 that Cambridgeshire, Huntingdonshire, the Isle of Ely and the Soke of Peterborough should be united into one administrative county. If this were approved it would involve 232 members of the four county councils, 325 of district councils of under 15,000 population and 232 over 15,000. If the membership of the proposed new county council was as high as 100 and assuming that the district councils below 15,000 were to disappear as separate units the number of representatives of the public in the four counties would drop from 789 to 322. One of the difficult jobs of the Local Government Commissions will be to balance the arguments, of which there are many, which can be adduced in favour of the larger authority with all necessary staff and financial powers to do their work properly with the disadvantages which may accrue if the area of the local authority is so wide as to make it impossible for the elected representative to be in close touch with the local inhabitants or ratepayers who really know the local needs.

Education and Crime

On December 7, four days before the publication of the report of the Central Advisory Council for Education, a report, drawn up by the Liverpool juvenile delinquency committee was published under the title, *1962: A Problem and an Opportunity.* It is interesting to observe that the earlier report, which referred only to local circumstances and was concerned with the likely increase in the incidence in juvenile crime as the increased number of children came into the labour market, largely foreshadowed the recommendations of the Crowther report.

The Liverpool committee after 12 months' investigation, concluded that a dangerous situation with regard to juvenile crime was likely to arise by 1962 unless the present system of school leaving and employment were radically altered, and suggested as a partial remedy that children should be kept longer in school or in further education. To quote from the report "If young persons have not got something purposeful in life there is always the danger that they will turn to something anti-social in order that someone will take notice of them." The Crowther committee, without juvenile crime included in its terms of reference, concluded that the present system by which young people had to undergo the sudden transference from school to adult life at the age of 15, was entirely unsatisfactory, and also recommended the raising of the school leaving age and increased facilities for part time further education as priorities.

The implication of these two reports would seem to be that what is now done to control juvenile crime is too negative in character and that the emphasis is placed upon cure rather than prevention. The probation service, child welfare service and other bodies concerned with the welfare of young people, can only act when a situation is drawn to their attention, and too often this happens only after an offence has been committed or a home situation has reached a stage when recourse to the courts is the only answer. We have studied too many reports of those local authority departments concerned with the welfare of youth not to be aware that the officers themselves are the first to recognize these shortcomings. Although education as a panacea for all ills, a faith of the reformers of the late 18th and early 19th centuries, has recently been much discredited, the criticisms of our educational system, inherent in the Crowther report, leads us to wonder whether education has ever been given a fair chance. One thing is certain, however. If education is to prove the answer to the wasteful, anti-social and often criminal use of leisure by young people, the teacher will have to be adequately paid for the job.

THE POLICE AND THE PUBLIC

[CONTRIBUTED]

[The following article is, in many respects, controversial and the *Justice of the Peace and Local Government Review*, in publishing this, must not be taken as necessarily endorsing the views expressed.—*Ed., J.P. and L.G.R.*]

The announcement by the Home Secretary that he is to institute some form of official inquiry into the workings of the police force and the relations of that force to the public is at once welcome and challenging. The exact form the inquiry will take has not yet been determined, but informed comment is hardening in favour of a Royal Commission, and this may well be the outcome of the Home Secretary's promise. Meantime it is worth while collecting a few thoughts with which one would like this inquiry to be concerned. Let it be said at the outset that the present writer considers that the title of this article—which is the phrase widely used by the Press in connexion with this matter—could well be reversed: for the relationship of the public towards the police is every bit as important for an efficient internal security system as that of the police towards the public. Indeed, one may say as one's first comment on the whole prospect of the inquiry, that we shall get nowhere useful if we consider it as a "probe" into the workings of the force, which somehow or other has begun to lose the confidence of the public. For the police say, with equal truth, that on many points and for good reason, *they* have lost confidence in the public.

We are told that the inquiry will be concerned, amongst other things, with the recruitment, training, and administration of the police force. The first point that occurs to me here is that whilst it is convenient to speak of "the police," there are in fact numerous entirely separate and autonomous police forces, of which, of course, the metropolitan police force is at once the largest and the prototype. Many voices have been raised, and their claim has not unnaturally been increased by recent events at Brighton and Nottingham, in favour of a national police force, whose establishment would involve the disbandment of borough and county police forces, and their reformation along centralized lines. The present writer is one of those who believes this should be done: to him it seems absurd that work of an exactly similar nature in neighbouring cities should be organized along different lines and that no interchange of personnel, experienced in work directly affecting the public, should be possible other than by the devious route of resignation and application for a fresh appointment. The more one thinks about this surely the more absurd it is, yet each borough police force presents an unbreakable front towards those minded to merge them with larger units: we have achieved a national fire service, but a national police force seems a long way off.*

Closely related to this particular aspect of the matter is the power of the local watch committee, which has already received some notice in these columns in connexion with a remarkable sequence of events at Nottingham. To say the least it is a remarkable power, this control over police which the metropolis finds necessary to keep wholly independent of the local authority. How it ever came about is, of course, an elaborate story in the history of local government, but its origin bears little relation to present conditions which have seen on the one hand a steady enhancement of the authority of local councils, and on the other a constant increase in the duties and responsibilities of the police. We would like to emphasize that if it is right for a borough council to control its police force through a committee, it would be equally right for the London county council to have similar powers *viz-a-viz* the metropolitan police.† Would anybody seriously recommend such a state of affairs? A national police force would, amongst other things, vastly facilitate the interchange of information about criminals and suspects over the country as a whole, and it would unequivocally accord equal rights in the exercise of their duties to all police officers irrespective of the locality to which they were attached. Furthermore, national standards of recruitment, a national promotion scheme, and a national standard of welfare facilities—canteens, etc., would become possible.

But the inquiry will probably rove a lot more widely than this. Why is the metropolitan police force 3,000 below its normal establishment? Why do trained officers so frequently resign, finding other occupations more attractive? These are questions involving a sympathetic approach from the public, for it may surely be acknowledged by those with any inside knowledge of the matter that conditions of service in the police force are anything but up to date in terms of current attitudes to hours of work, periods of duty, and rates of pay.

Perhaps a far more important matter than the one of pay is that of conditions of service. Pay scales have come in for a certain amount of attention in recent years, though they have not been brought fully into line with the depreciation of the value of money as compared with pre-war days. Nevertheless, it is probably not rates of pay alone which make so many young men hold back or resign from police duties. It is the spread of duty over the 24 hours, and over the week and the fortnight, which is daunting at a time when almost every business concern offers a 44 hour week, or even less, with guaranteed weekends and so on. It is common for plain-clothes officers when any major inquiry is afoot to work 80 or more hours a week. Not only is this so, but during that week they may be called upon to abstract themselves from an absorbing inquiry for the purpose of giving evidence, one day at a magistrates' court and on another at Assizes or quarter sessions, always to rush back to the station again to resume the inquiry, never knowing, and their wives never knowing, when eventually they are to get home at night. The mention of the wives is particularly significant: it is very hard indeed for a conscientious police officer to enjoy an adequate home life. It is time this type of matter was ventilated, time that the public knew of the devoted hours of service, often abortive in results, but nevertheless strenuous, which the police carry through week by week—frequently with one inquiry overlapping another—in their attempt to cope with an ever-mounting wave of crime, which, welfare state notwithstanding, encroaches so menacingly upon public security.

It is to be hoped that another aspect of the inquiry will cover suggestions advanced from various quarters that certain

* The case against the "nationalization" of police was argued at some length in 1948 and 1949, *see* 112 J.P.N. 767 and 113 J.P.N. 92, 406, 497. *Ed., J.P. and L.G.R.*

† This is not quite so: the metropolitan police area covers more than the administrative area of the L.C.C.—parts of other Home Counties are also in the area. *Ed.*

duties now entrusted to the police should be taken from them and handed to a freshly recruited corps, whose status as enforcers of the law would appear, on any recommendation, to be highly anomalous. The type of proposal is most commonly made in connexion with Road Traffic Acts, and the present writer, for one, ventures the opinion, very forcibly, that to remove the enforcement of part or all of the Road Traffic Acts and the regulations made under them from the ambit of the police forces with the sanction of the criminal law behind them, would be a disastrous step. For better or worse the 20th century has brought with it a revolution in transport whose development has entailed the creation of a whole catalogue of criminal proceedings unknown in happier days.

It is one thing to write a leading article in a newspaper saying that it is absurd for "able bodied police officers needed for the detection of burglars" to enforce parking regulations, and quite another to say how any laws are to be enforced if not by the police. Enforcement involves sanction; sanction involves the criminal law; the criminal law involves the police and the courts. It is a simple and unavoidable progression. If parking or any other regulations are to be enforced—and heaven knows they need to be—then defendants must be punished, and in our country they must have the right of appeal against their punishment. Furthermore—and this is the crux of the matter—there must be behind the body which enforces these regulations, whatever its name, the common law of the land sustained and embodied in the rule of Parliament on the one hand, and the Executive subservient to it. An authoritative review of the type of proposal which has been advanced from numerous quarters with the ostensible aim of making the police responsible for major crime is rigidly called for. Which is the greater crime in any event?: to deprive a family of its breadwinner by wanton negligence on the road or to steal a bottle of milk? The fact is that at the lowest level of its activities in any sphere, the work of the police can be made to look ridiculous if argument so desires. If the forthcoming inquiry directs attention to the constitutional priority of one code of law with unified enforcement, it will achieve much.

Finally, it is surely worth drawing attention to an aspect of police work which causes the police, if they are at all conscientious—and most of them are—a great deal of anxiety: the enforcement of the laws relating to sexual conduct and to the enforcement of public order. It is these branches of the criminal law which impinge most urgently upon members of the community who are sometimes apt to think of themselves, because of their social situation or personal creed, above the law. No one is above the law except diplomats and the Crown. If a police officer discovers a member, or members, of the public behaving in a way which infringes, *prima facie*, upon public order or decency, he is in duty bound to initiate proceedings, no matter what the status of the alleged offender. We would go further: if a police constable brings to the station a person with a distinguished name or reputation and makes out a *prima facie* case of a breach of the law to the officer who happens to be in charge at the time, the latter is bound, in his turn, to support his colleague and see that the matter proceeds along the channels carefully laid down by precedent and rules for the laying of a charge or summons for public hearing in a magistrates' court. Nothing can do more harm to the police than any attempt, whether successful or not, to cast any form of protection from the full rigours of the criminal law over any person whatever. At the same time, of course, a member of the public who considers himself unlawfully arrested or prosecuted may take proceedings in the civil courts, and the fact that such action may be taken is undoubtedly a helpful counter in the balance when police officers may have a difficult case to handle. But the answer to such a problem must always be made *with regard to the evidence available* of the alleged offence and *not* with regard to the status of the alleged offender. The Press are apt to discuss these matters in terms which make it very difficult for the police to carry out their duties without a sense that they are being hampered by public opinion. It is a curious feature of Press presentation of police activities that words like "snooper" or "Paul Pry" will be levelled at constables carrying out such duties as the enforcement of order in Hyde Park, whereas they will never be used in the case of police activities directed to, shall we say, the suppression of shop lifting. Whilst they are very careful not to be over-explicit in the matter, certain Press comments cast a good deal of innuendo whose general effect is that certain laws are best honoured in the breach rather than the observance.

The police, of course, can accept no such thing. Criminal law must be regarded as an entity, each part of which demands enforcement up to the limit of the number of officers available. Once the police are encouraged, whether acitly or otherwise, to emphasise certain branches of the law as against others, grave damage can be done, not only to the general spirit of the community, but to the morale of the police officers themselves.

We do not for a moment suggest that the foregoing is anything but a brief résumé of some of the more important aspects of the relations of police with the public. The forthcoming inquiry can achieve nothing if it is not comprehensive. We do suggest, however, that if an inquiry were encouraged to consider the points we have put forward these would of themselves open fresh avenues for expansion. In any event, the ultimate report of the commission will obviously be a social document of far-reaching importance, which should receive urgent attention from the legislature as soon as it has been digested by Parliament and public opinion.

[In our next issue, we hope to include an article on the forthcoming inquiry, by a senior police officer.—*Ed., J.P. and L.G.R.*]

ADDITIONS TO COMMISSIONS

GLOUCESTER COUNTY

Mrs. Florence Lily Battle, The Marshes, Coleford.

Dr. Vernon Leslie Smith Charley, Hillside, Boxbush Road, Coleford.

Richard Charles Clive, Baldwin's Farm, Dymock.

Rodney Eric Cole, Moor Farm, Fairford.

Michael Aynsley Dimmer, Cherrington, Greenhills Road, Charlton Kings, Cheltenham.

Mrs. Bridget Maureen Fisher, The Chantry, Berkeley, Glos.

Mrs. Mary Margaret Fitzgerald, Abbey House, Winchcombe, Cheltenham.

Joseph Lovell Goulder, 31 Eldorado Road, Cheltenham.

Caleb Jones, 12 Two Hedges Road, Bishops Cleeve, Cheltenham.

Mrs. Margaret Cochrane Sleeman, Kilcreggan, Milkwall, Coleford.

Sir Bernard Waterer, C.B., 1 Polefield Gardens, Lansdown, Cheltenham.

Francis Richard White, North Farm, Ashley, Tetbury.

Col. The Hon. George Neville Clive Wigram, M.C., Poulton Fields, Poulton, Cirencester.

Henry Kellett Williams, Kayte Farm, Bishops Cleeve, Cheltenham.

Cyril Henry Wood, Cornerways, Daisybank Road, Leckhampton, Cheltenham.

Herbert Maxwell, Yercombe Lodge, Stinchcombe, Dursley, Glos.

David Charles Yates, Four Gables, Blacksmith Lane, Prestbury, Cheltenham.

SUPERSEDED PLANNING DECISIONS

By EDWARD S. WALKER, A.C.C.S., D.P.A. (Lond.)

Most people concerned with the administration of the Planning Acts are familiar with the revocation provisions of s. 21 of the Act of 1947, which relate to the revocation and modification of permission to develop.

However, there appears to be no provision in the Act of 1947 for two further cases in which a local planning authority may wish to change its mind. These are (*a*) where it is desired to revoke a planning refusal and (*b*) where, after the grant of a planning permission, an application is submitted for permission to develop and the planning authority, whilst granting this subsequent application, wish to call in (as it were) the planning permission first granted, without using s. 21 and thereby invoking the compensation provisions of s. 22. This is of particular relevance in cases of change of use.

The first case is simply solved by the expedient of inducing the applicant, who has had his application refused, to make a further submission of his proposals which would be granted.

The second case is, unfortunately, not so easily resolved. The main difficulty is that a planning permission (apart from special circumstances) attaches not to the applicant but to the land to which it relates and, to that extent, becomes part of the estate in the land. A local planning authority has no power to diminish an estate in land within the context of the present discussion.

Furthermore, as has been said, the problem is perplexed by the desire of the planning authority to nullify the first planning permission without running the risk of incurring any liability for compensation.

One possible solution is that the successful applicant could, if he were the owner of the freehold of the land, surrender to the planning authority his first form of planning consent. This deprives him of written evidence of his previous planning decision, but such permission would always be disclosed by any requisition for an official search in the register of local land charges, because the registrar has no power to delete the entry from part III (*c*) of the register, or by an inspection of the register of planning applications kept under s. 14 of the Act of 1947.

As a development of this position, the applicant might also be induced to give to the local authority an undertaking not to proceed with the first permission. This might avail, but if the applicant were to persist in the first planning permission (however undesirable that might be) the local planning authority would, it is suggested, be powerless to enforce the undertaking (even if it were under seal) because the local planning authority cannot complain of the carrying out of development for which a person has permission, nor can a person contract with another to abrogate his legal rights. Those rights will also remain.

Another suggestion is that it could be made a condition of the second planning permission that the first permission should be void and should not be implemented. Whilst this might be of persuasive force to an unsuspecting applicant it is suggested that such a condition, if ignored, would be void and unenforceable.

In this regard reference must be made to the decision of the Divisional Court in *Kent et al.* v. *Guildford R.D.C.* (*The Times*, April 30, 1959), where the Court rejected an argument by counsel that the owners of a site were entitled to use it as a caravan site for 95 caravans because the owners had been granted permission in 1950 to use the whole site for 35 caravans, and further permission in 1953 to use part of it for 60 caravans. Their Lordships (Lord Chief Justice, Donovan and Salmon, JJ.), dismissed this appeal by Case Stated, of the appellants against their conviction of permitting the 17 acres to be used for the purpose of accommodating more than 60 caravans contrary to an enforcement notice served on them by the respondent council.

In 1950 the predecessor in title of the appellants obtained planning permission to use the whole site for the accommodation of not more than 30 caravans. In 1953 the appellants applied for permission to use land adjoining the appellant's premises as a park for 60 caravans. The plan which accompanied the application showed only part of the whole site. This application was granted.

Counsel for the appellants submitted that the permission granted in 1953 referred only to the part of the land which was shown on the submitted plan. To that extent, it was his submission that the grant of permission in 1953 superseded the permission of 1950. There was nothing in the Act of 1947 about later permissions superseding earlier permissions and there was no authority on the point.

The Lord Chief Justice observed that this was a matter of common sense, and, in giving judgment, said that the appellants were not in breach of the permission of 1953 which limited the number of caravans to 60 if the permission of 1953 were limited to the part of the site which was shown on the plan. The respondent council, whose difficulties were appreciated, took the view that the permission of 1953 supplanted the permission of 1950 and that it referred to the whole site. The justices concluded that the council was right, and fined the appellants £30.

The sole question was the meaning of the permission given in 1953. If no reference was made to the history and surrounding circumstances of the matter, then it was obvious that the permission referred only to the land shown on the plan, which was only part of the 17 acres. But that would lead to an absurdity. The whole position would be nonsense unless the permission of 1953 superseded that of 1950 and referred to the whole of the 17 acres. The justices were, therefore, right in holding that there had been a breach of the permission of 1953, in that the appellants had allowed more than 60 caravans on the whole site, and the appeal would be dismissed. Donovan and Salmon, JJ., agreed.

Whilst the decision of the Divisional Court upon this matter cannot be doubted as a decision upon the facts of the particular case, it is with the greatest respect submitted that it cannot be taken as offering any general principle upon the matter. If, for example, an applicant secures planning permission to develop a site for (say) the erection of lock-up garages (which development is, in point of fact, not carried out), and planning permission is later granted in respect of the same site for the erection thereon of some other less valuable development: and the planning authority, having reviewed the matter (possibly in the light of the views of the owners and occupiers of neighbouring properties) conclude that the less

valuable development would be the more desirable to be carried out, there is nothing the planning authority can do to vitiate the permission for lock-up garages, other than to revoke it and pay the compensation assessed.

It cannot, surely, be said that the original permission has been superseded (or abrogated, because that is what supersession would amount to) by the later permission. There is nothing in the Town and Country Planning Acts to say that a prospective developer cannot have second, third, or even more thoughts about the development of a site, and then revert to that of which he first thought, always assuming that he has been able to obtain planning permission for his proposals—even if, as the Lord Chief Justice remarked, the matter is one of common sense.

FINANCIAL PROBLEMS OF DELEGATION

If local authorities had been created in a logical way it is possible that delegation of powers from the larger to the lesser bodies would be unnecessary. In typically British fashion, however, logic has not always been predominant in the evolution of local government in these islands.

From the 1902 Education Act onwards an increasing volume of social legislation placed additional powers and duties on both counties and county districts, and each type of authority struggled constantly for the allocation of functions to itself. The Education Act of 1944 and subsequent legislation accelerated the process by which control of the major services was placed in county council hands and correspondingly the importance of effective delegation.

The matter is indeed important for the future of local government. The feeling of frustration which is so widespread, particularly amongst the larger county districts, was epitomized by Alderman R. J. Knowles of Hendon at the 1958 Conference of the Institute of Municipal Treasurers and Accountants in a discussion on what was then the Local Government Bill. He said ". . . the word 'delegation' means exactly transference of power—it doesn't mean that we will give you something and then control you. It means that we will put you in charge. Now, sir, how on earth can you transfer power to act if you don't transfer the finance with which to act? . . . in local government the financial control of all those services that are going to be conferred nationally must be vested in these (local) people and until that is done there will be no local government . . ." The alderman went on to say that, in his opinion, if the present system continued the effect on local government would be catastrophic ". . . it won't be a question of local government ceasing to attract people of worth—they won't get anybody at all, and people from our own areas have already seen the rot set in."

This view of certain authorities is not held by the majority of county districts. In 1954 the County Councils Association, the Urban District Councils Association, the Rural District Councils Association, and the National Association of Parish Councils submitted an agreed memorandum to the Minister of Housing and Local Government on certain principles of delegation. These were:

1. Estimates of expenditure are to be approved by the county council and are not to be exceeded.

2. Broad questions of policy are to be determined by the county council.

3. Schemes of delegation should be formulated by a joint committee composed of representatives from the county council and the county district councils.

The associations also agreed that cost should not be the only controlling factor: if delegation cost more (within reason) it also created local control and interest which was worth paying for.

The Association of Municipal Corporations disagreed with the contents of the joint memorandum. They wanted certain functions to be conferred as of right on county districts with populations exceeding a specified figure and certain other functions to be delegated. A county delegation scheme was to be prepared jointly by county and county district councils: in the event of failure to agree there was to be a right of appeal to the appropriate Minister.

The 1958 Act followed the Education Act, 1944 in limiting delegation as of right to authorities having populations of 60,000 or more. Outside the Greater London area this only covers 23 out of over 800 urban districts. It is true that other authorities can make a delegation scheme for health and welfare services with the consent of the Minister of Health, but he has to be satisfied that special circumstances exist before giving his consent.

In the committee stage of the Local Government Bill similar views to those of Alderman Knowles were expressed by a number of members and largely for the same reasons. Mr. Henry Brooke in reply said that part I of the Bill relating to finance (and in particular to the general grant and rate deficiency grant) was based on the assumption that overall financial planning for the services to be the subject of delegation was to be left to the county council.

So that for the present at any rate the pattern has been fixed. The Ministry of Education has issued its views on the position of excepted districts in circular 344 of December 17, 1958. While acknowledging that the county authority must retain its responsibility for finance the Minister believes that adequate control can be combined with reasonable freedom for the excepted district if certain enumerated principles are followed. Estimates should be prepared in such a way as to enable the county council to satisfy itself about the level of expenditure proposed on the various elements of the service, but only in special cases should particular items need individual approval. The excepted district council should be free to spend up to the total amount approved under each of the main heads of account and it should be possible to spend money on a new item that may have become urgent at a particular school. It may also, the circular says, be appropriate to allow a limited power of virement.

Discussions between the local authority associations have revealed wide differences of view as to the financial clauses which should be included in schemes of divisional administration for excepted districts. Not surprisingly it is difficult—if not impossible—to combine effective delegation and economic administration, and if eventually the associations agree on the issue of model clauses these are likely to be so wide that the details of individual schemes will have to be hammered out locally.

Committee chairmen and treasurers have much responsibility here—and we do not refer only to the county council

representatives. The words of the first post-war Boundary Commission of 1947 are worth recalling: "Success or failure (of delegation) depends on mutual confidence and goodwill. It is easy to state in general terms that the county council shall be responsible for policy and finance and the district council for the day to day running of the service. It is impossible to secure the observance of this principle merely by the language of the instrument embodying the arrangements. Personal factors . . . play an all-important part."

In the past there has been difficulty with divisional executives who over-spend their estimates without authority. This is a bad thing to do and should not occur in any sort of local authority. In relation to divisional administration it provoked one county council to suggest that powers should be given to county districts to meet such excesses out of their own funds. The Association of Municipal Corporations were not averse: they proposed that the principle should apply to all those authorities to whom health, welfare or education powers had been delegated. The Minister of Housing and Local Government did not agree however: he said that the proposal would be inconsistent with the need to keep ultimate control of broad policy in the hands of the authority responsible for the service over the wider area.

County treasurers should review the heads of expenditure under which their estimates are prepared: they and their members should be quite sure that the particulars required are at the irreducible minimum, and that estimate heads are similarly limited. Similarly county district representatives who might criticize county requirements should be quite sure that the estimates and accounts which they prepare and approve for those services for which they are wholly responsible are on the same broad basis as they wish to see the county adopt.

Professional people tend sometimes to become enmeshed in technicalities of their own devising. The objects of financial control are to secure that the delegatee authority spends its pre-determined share of the pool of money available in accordance with the general standards of provision laid down. In our view this does not mean, for example, that it should be necessary to obtain county approval to spend more money on repairs to school A and correspondingly less on school B than was originally estimated: on the other hand it does mean, for instance, that the complement of teachers employed must accord with county standards.

The detailed mechanics of financial administration are another matter. Arrangements for payment of accounts, salaries and wages, the receipt of income, and the consequential bookkeeping are not matters of principle and attempts should not be made to elevate them to that status. In general there may be a disposition to regard size as synonymous with economy but the proposition is not by any means self-evident. If the work is done locally it may make overall economies possible in the local financial administration which, if the delegated function records were excluded, might not be practicable. On the other hand the county may well be able to demonstrate the lower cost of large scale production. An unprejudiced assessment of relative costs is the best guide here.

FINANCIAL LOSS ALLOWANCES

[CONTRIBUTED]

A member of a rural district council (a farmer) claimed financial loss allowance in respect of his attendance at a meeting of the authority. The claim was disallowed by the district auditor and the member in question was surcharged the sum of £2 in respect thereof.

The member exercised his right of appeal to the Minister of Housing and Local Government and in due course there was a personal hearing of the appeal by a member of the Minister's legal staff who reported back to the Minister.

The district auditor in his statement of reasons, disputed the general proposition that if a farmer is absent from his farm during working hours, he must be presumed to have suffered loss of profit.

If, however, the farmer employs additional casual labour then the additional expense, because of his absence, would be admissable, but on the occasion in question the farmer admitted that he did not employ additional casual labour. The district auditor contended that the farmer's claim upon a general proposition that there must be loss of profits because the farming business was deprived of his managerial and supervisory functions and of his own labour, falls short of the measure of proof required to substantiate the claim for financial loss allowance. The auditor pointed out that a claimant is required to declare that he has *actually* and *necessarily* suffered loss of earning which he would otherwise have made and that the amount of such loss was not less than the amount claimed. It follows that it is not only that loss *may* have occurred—it *must in fact* have occurred and in the auditor's view this fact must be capable of proof. He did however concede that the measure of proof required from a self-employed person must often fall short of absolute proof such as can usually be obtained in the case of a wage earner.

The farmer, in his appeal, maintained that it is in the nature of his business as a farmer that his absence from the farm must reduce the efficiency of work and so lead to a loss of profit of at least the amount of allowance paid. He argued that as a self-employed person, to establish entitlement to the allowance, absolute proof of loss is not possible and some measure of proof short of certainty must be accepted. He argued further that it is not necessary to establish the loss in relation to a particular occasion when "approved duties" are performed, but that it is sufficient to do so in relation to such duties in their entirety.

The Minister in dismissing the appeal stated that he could not accept the view that it is not necessary to establish loss in relation to a particular approved duty. Section 112 (1) of the Local Government Act, 1948, provides that a member of a body to which part VI of the Act applies should be entitled to receive payment where loss of earnings or additional expense is necessarily suffered or incurred by him "for the purpose of enabling him to perform" any approved duty. As to the measure of proof required, the Minister agreed that a self-employed person may not on all occasions be able to produce absolute proof of loss of earnings arising from the performance of a particular approved duty, but he considered that the probability of such loss must be so clearly demonstrable as to lead to the presumption that it has been necessarily incurred. The Minister had come to the con-

clusion that such loss had not been established in relation to the approved duty undertaken on the day in question and he accordingly confirmed the decision of the district auditor and dismissed the appeal.

The Minister did not doubt that the appellant acted in the belief that his action was authorized by law and he formally declared this to the case and relieved him under s. 230 (2) of the Local Government Act, 1933, from personal liability in respect of the amount surcharged.

This is a decision that will be of interest to many councillors. It must not be assumed that this will cover every case or even the majority of cases of this kind. It related to the particular circumstances of a councillor farming on a small scale where he not only carried out managerial functions but also contributed his personal labour to the running of the farm. Whether this decision will affect claims made by other self-employed persons, *e.g.*, shopkeepers or insurance agents must be left for each individual affected to decide, but it does seem that if district auditors decide that a greater measure of proof than a mere presumption of loss because of absence from the business, is necessary, then many self-employed councillors will be debarred from claiming financial loss allowance.

MISCELLANEOUS INFORMATION

FOOD HYGIENE

The Ministry of Health in co-operation with the Ministry of Agriculture, Fisheries and Food, has issued two booklets on food hygiene. One suggests a code of practice on the hygienic transport and handling of meat and the other a code of practice on hygiene in the retail meat trade. In a foreword to each booklet by the Minister of Health he explains that the codes have been published as a helpful and practical contribution to the better handling of meat. They have two broad aims; that the conditions in which meat is transported and handled should be as good as possible; and that those who have to handle it should never through familiarity treat it with less than the care they would expect to have given to meat which they eat themselves. The Food Hygiene Regulations enable the courts to impose heavy penalties for bad handling of food. But, as is pointed out by the Minister, it will never be necessary to resort to prosecutions if all whose livelihood is concerned with handling meat are continually conscious of the ways in which contamination can occur and of the precautions that can be taken to avoid it. Regulations cannot give advice and guidance and accordingly the Food and Drugs Act, 1955 provided for the publication of codes of practice, which can make positive suggestions for improving conditions and methods of handling meat. The codes now published are based largely on drafts prepared by the Royal Society for the Promotion of Health's standing committee on the hygiene of food and food equipment. In December, 1955, the society offered the Ministers the opportunity of adopting and approving their draft codes and subsequently agreed that they might form the basis for codes to be published under the Act of 1955. The drafts were revised following consultations with local authority associations, trade associations and other interested persons. The first set of codes deals in detail with the general construction of vehicles and with procedure for loading and unloading. Then advice is given especially on retailers' delivery vehicles and mobile butchers' shops. The second set of codes makes detailed suggestions as to the main structure and fixtures of food rooms, their lighting, ventilation, water supply and drainage. Special reference is made to the provision of sinks and wash-hand basins. Advice is also given on pest control precautions to be observed in the storage and sale of meat.

WORCESTERSHIRE GREEN BELT

Worcestershire county council have submitted an amendment to their county development plan to the Minister of Housing and Local Government, referring to that part of the green belt around Birmingham and the Black Country which falls within their jurisdiction. The amendment proposes that the green belt should cover an area of nearly 150 square miles, stretching roughly 10 miles from the borders of Birmingham, Halesowan and Stourbridge. The object of the belt is to check the growth of the industrial core of the West Midlands into the open country; to limit the expansion of built up areas in Northern Worcestershire so that neighbouring towns and villages will not merge into one another, and to ensure that the present character of the area is not adversely affected by the development of land and to safeguard the interests of agriculture.

The report of survey, issued with the written statement of the amendment, speaks of a very marked increase in immigration into the proposed green belt during the last few years, an immigration that stems almost entirely from the industrial area it surrounds, a result of the ease of access to and from the industrial areas and the attractiveness of the various districts and the pressure for development has tended to increase as the land outside the belt became used. A particular problem, brought about by the increasing demand for industrial land, is the future of the country workshops and old mills within the proposed green belt which have an existing industrial use, and the report states that there have been cases of properties of this sort being acquired by industrialists, who, after establishing themselves, have sought extensions for purposes unconnected with rural industry. A further problem arises from the great impetus given to the working of sand and gravel deposits by the heavy demand for these products brought about by residential and other development in the country. The existence of large reserves of sand and gravel in certain areas of the belt means that there will be particular need for applications for extensions of present workings or for new workings to be dealt with in relation to the effect on amenity, agriculture, road traffic and availability of alternative sources and emphasis will be placed on the proper reinstatement of worked-out sites.

The report remarks that the size of agricultural holdings within the green belt area has been affected by their proximity to the industrial area and the tendency to break up farms into small parcels on the fringes of built up areas. It suggests that this has made it more difficult for the planning authority to resist sporadic building and extensions of urban development, and that a reorganization of the pattern of farm boundaries might strengthen the authority's hand.

THE WARWICKSHIRE COUNTY BOOK, 1959

We welcome the reappearance of this invaluable compendium after a lapse of 20 years, a lapse largely due to wars and rumours of wars during the period since it was last published. Believed to be the 14th edition—although it is only since the edition of 1865 that it has approached the size and scope of the present volume—the county book is in no sense a report, even though it contains a brief summary of events during the last 70 years and what might be loosely described as a report by the clerk to the council, Mr. L. E. Stephens, by way of a preface. It is in fact an informative directory to all aspects of county administration.

The volume is divided into five parts; part I dealing with the work of the county council and parts II and III with that of the courts of quarter sessions and petty sessions. Part IV covers the standing joint committee and part V the Lieutenancy, the Shrievalty, Parliamentary constituencies of the county, and the Assize and county courts. Finally three maps, showing the boundaries of the various local authorities and those of the several divisions and districts into which the county is divided for administrative purposes, are inserted at the end of the book.

Much information contained in the book will be of particular interest to the general public as well as to officers of the local administration and to the Press. It must be of value for the public, for example, to be able to learn the delegated powers of the various committees of the council—information that in too many local areas is not clearly understood—and to have easy access to the excellent summary of the byelaws applicable in the area. It would take too long to itemize the wealth of information on county matters contained in the county book and we can only say that it appears that little if anything of relevance to the county's administration has been omitted. While we understand that such a compilation is a matter of considerable effort and expense and that to keep it up to date requires frequent revision, we feel that much of the misunderstanding that surrounds local government and administration would be diminished by similar publications by other county authorities.

ROAD CASUALTIES — OCTOBER, 1959

There were 4,497 more casualties on the roads of Great Britain in October this year than in October, 1958, representing an increase of nearly 17 *per cent.* Traffic on main roads, as estimated by the Road Research Laboratory was 11 *per cent.* heavier than a year ago. Altogether 655 people were killed on the roads. This was 67 more than in October, 1958. The seriously injured numbered 7,586, an increase of 1,286; and the slightly injured 22,977, an increase of 3,144. Casualties to child pedestrians showed a decrease of 21 in the number killed. Accidents to motor-cyclists, drivers of motor-scooters and mopeds, and their passengers, again accounted for the main increase in casualties. In this class of road user, casualties were 2,336 more than in the corresponding month of last year. October casualties brought the death roll on the roads in the first 10 months of this year to 5,014. This was 277 more than in the same period of 1958. The total for killed and injured was 272,910, an increase of 27,129.

ANNUAL REPORTS, ETC.

THE NATIONAL COUNCIL OF SOCIAL SERVICE

The 40th annual report of the National Council of Social Service takes as a theme "communication" which lies at the root of its work. It is suggested that each year sees additions to the already complicated structure which the State is erecting for welfare, education, health and so on. The whole structure of the council was designed to make easier this communication between the national voluntary organizations, among themselves and with the statutory bodies, both at the centre and, by means of local groups, throughout the country. Some of the ways in which the various departments and associated groups have, in their different but interdependent fields, worked towards that purpose during the past year are shown in the report. Reference is made at the outset to an address by the Minister of Labour on the place of voluntary organizations in the field of economic and social questions at the 1959 session of the International Labour Conference. Support for the kind of work which the council does is also given in extracts from speeches by the Lord Chancellor and the Home Secretary.

In describing the work of the various departments or groups, reference is first made to the councils of social service and rural community councils which serve the country generally and provide a focus for voluntary organizations and statutory bodies in their concern for the welfare of the community. The women's group and the standing conferences of women's organizations bring about co-operation and "communication" in their special field. Community associations are doing increasing work, especially in new towns and in new housing areas. Their work depends much on local leadership. With the help of the Carnegie United Kingdom Trust and the co-operation of certain local education authorities courses have been arranged for the training of voluntary leaders and community centre wardens.

Women's clubs, of which there are 500 in the national association, mainly in industrial towns and on new housing estates, are extending their work. Sometimes it may be thought that there are too many separate organizations overlapping and sometimes even covering the same field. It is satisfactory therefore to see from the report that the women's clubs work closely with other organizations in their neighbourhood such as the citizens' advice bureaux and those concerned especially with the welfare of the elderly. Turning to the work of the National Old People's Welfare Council and its 1,431 local committees this is described as a working model of an experiment, now well proved in co-operation between organizations and individuals concerned with the welfare of the elderly and in new developments in community care. It is significant of the widespread nature of its work that 51 national voluntary bodies and six government departments are represented on the council. Amongst various activities mentioned is the work of the council in distributing the money provided by the King George VI Foundation for club development and the separate grant for the training of voluntary workers. On the use of clubs, it is mentioned that it was shown by two surveys that only about 13 *per cent.* of old people belong to clubs. Whilst realizing that many elderly people who are not club members probably share in group activities catering for all ages and that some prefer not to belong to any kind of organization, the council is giving serious thought to the way in which provision for leisure activities and club programmes might develop so that a larger section of old people may benefit.

The standing conference of national youth voluntary organizations provides a comparable scheme of co-operation between organizations concerned with the welfare of those at the other end of life. A network of local standing committees spread over the country helps and makes more widely known local activities and experiments and the number has grown during the year. Links have been made with similar organizations in Western Germany, the U.S.S.R., and Poland and interchanges of young people are being arranged. This leads up in the report to the work done by the council in a much wider international field, through its membership of the International Conference on Social Work and in individual ways. An important activity is the work of the international exchange committee for social workers and administrators. This committee has continued its work in selecting British almoners, psychiatric social workers and settlement workers for work and study in the United States and has given advice to American and Commonwealth social workers wishing to spend some time in Europe. The scheme for sending youth leaders to America for work in children's summer camps has also been extended. The committee has continued to co-operate with the United Nations Technical Assistance Office in preparing programmes for visitors under the exchange scheme and in recruiting British social workers to go abroad on individual visits and to attend study groups and seminars on subjects such as "Social aspects of housing" in Finland and "Social group work" in France. A seminar at Bristol organized on behalf of United Nations on "community development and social welfare in urban areas" was attended by about 80 participants from 17 countries including Poland, Spain, Portugal and Israel. Finally the report refers to the work of the central churches group which promotes co-operation between representatives of the churches and voluntary organizations and has been instrumental in the formation of local groups in some parts of the country; and the citizens' advice bureaux whose local work does so much to help people in their difficulty about the effect of social welfare legislation and in other ways.

The report includes photographic illustrations of the ways in which the council and its associated organizations in town and countryside stand for co-operation and communication between the headquarters of voluntary social work and "Whitehall" on the one hand and between county community councils, town councils and social service and county hall and town hall on the other hand. There are also other illustrations typifying the special work of the various departments.

NORTHAMPTON PROBATION REPORT

This report for the year 1958 shows a seven *per cent.* increase in the aggregate work as compared with the previous year. It contains a good deal of speculation as to the cause of the present crime wave—as usual with little clear-cut conclusion. Hope is expressed that the new Institute of Criminology at Cambridge University will enable fresh light to be thrown upon the problem.

The report comments on the unwisdom of adding unenforceable conditions to probation orders: it appears that a probation order was received from another area incorporating a provision that the probationer should "wear clothes of which his half-brother approved." We give publicity to this piece of absurdity as a warning: certainly such things have no place in probation orders.

Case loads remain high and the after-care duties are inevitably rising, owing to the increased prison population but it is clear from the words of Mr. G. F. Lampard, principal probation officer, that this work, for all its ardousness, is yielding very favourable results.

BOROUGH OF MARGATE: WEIGHTS AND MEASURES DEPARTMENT

The chief inspector, Mr. U. A. Bancroft, in his report for the year ended March 31, last, notes with regret the deletion from the Kent County Council Act, 1958, which became law in December of that year, of all the sections that would have been of help to the weights and measures department. He remarks that the law governing hackney carriages, now 112 years old, although eminently suitable for dealing with horse drawn vehicles of a century ago, is totally inadequate for present needs; that regarding private hire cars there is no legislation at all, and that the principal Weights and Measures Act, introduced over 80 years ago, due to the vast changes in retailing practice, now leaves much to be desired. He gives as an instance the absurdity that it should

be permissible for bulk distributors of petrol to use an archaic wooden dipstick to measure quantities of spirit delivered in tankers when, at the same time, garage proprieters have to retail petrol by means of costly instruments which are subject to statutory verification and inspection. Thus, while it is possible to safeguard the public in the sale of food, in the sale of most other commodities by weight or measure no such protection is afforded unless the risk is taken of using a statute which was not designed for the purpose.

As an example of the lack of protection given to the purchasing public as a result of ineffective legal powers, Mr. Bancroft cites the "giant" or "mammoth" containers of modern advertised goods, which, he states, are extra large packets incompletly filled. Detergents, polishes, animal foods, disenfectants, paints, toothpastes and soaps, to mention only a few, are commodities not subject to any requirements such as those applied to many prepacked foodstuffs, and there is no law to prevent the use of containers which are far too big for their contents. He suggests that reduction in price as a result of "bargain offers" may be accompanied by a reduction in weight, which would seldom be noticed by the consumer because the size of the container remains the same.

Many anomolies could have been rectified, Mr. Bancroft believes, by the borough being permitted to take the powers proposed in the Kent County Council Bill and while it is true that many local authorities have obtained such powers and that many others require them, successive governments during the last 20 or 30 years have not been able to find Parliamentary time for national legislation. His department, he states, is more than weary of trying to safeguard the public in the atomic age with bow and arrow legislation.

THE CITY OF CARDIFF ACCOUNTS, 1958–59

The capital of Wales has a population of just over a quarter of a million, a rateable value of £4,350,000, and has levied a rate of 18*s.* in the current financial year.

Expenditure for 1958–59 totalled £10¼ million of which approximately a third was met by rates. This is a higher proportion than most Welsh authorities.

The year's working resulted in a net underspending of £39,000 on estimates.

City treasurer R. L. Davies, F.I.M.T.A., warns the council that housing rent levels will need to be reviewed when the 1960–61 estimates are under consideration. There was a deficit of £81,000 on the housing revenue account for 1958–59, reducing the credit carried forward to £342,000. Rent arrears were reduced during the year to £137,000.

Cardiff owns a water undertaking and a transport undertaking. The former produced a surplus of £53,000 (credited in aid of the general rate): there was a small deficit of £6,000 on the transport undertaking due to the wage award of November 1958.

Two noteworthy events were held in the summer of that year. A Festival of Wales went on from May to October, while the British Empire Games were held in July. The council's newly opened international swimming pool—the Wales Empire pool—was much praised.

DERBYSHIRE CONSTABULARY

Recruitment to this police force during 1958 was six less than in 1957, and the number of vacancies showed a decrease of 11 compared with a decrease of 26 during the previous year. Of the 44 appointments made, 12 were in respect of applications originally made in 1957, one was an appointment of a constable with previous service in another force and one a re-appointment. A feature of the recruitment figures for the year was the high percentage of applications rejected as below physical, medical or educational standard. Sixty-one applicants out of a total of 261 were so rejected, and a further 41 applicants were rejected as being in reserved occupations or liable to call up for national service. A total of 33 members left the force during the year, an increase of nine over 1957. The establishment of the cadet force remained the same as in the previous year at 50 male and two female cadets. No recruiting difficulty was experienced and vacancies were quickly filled from a long waiting list of good type applicants. The report remarks that the cadet force is an excellent medium for recruiting and training for the regular force. In view of the difficulty experienced by most police authorities in obtaining recruits to their regular force, there would seem to be a strong case for the expansion of the cadet force in places, such as Derbyshire, where good type applicants abound.

Mr. W. E. Pitts, chief constable of Derbyshire, is in step with most other chief constables in the country when he reports an increase in crime (367) and an increase in the proportion of this crime committed by juveniles. In Derbyshire no less than half the crime was committed by young people in the eight to 17 age group. Although when Mr. Pitt says that the days when children were taught at home and at school "to keep my hands from picking and stealing" seem to have gone with the days of want, he probably does an injustice to the schools, few would disagree with the good sense of his general remarks on the problem of juvenile crime. Mr. Pitt suggests that children now have, in many cases, incredible sums of pocket money and desire more, money which is spent in any pursuit that will avoid them being at home. While nobody would deny them any healthy recreation or pleasure thus obtained, he considers that somebody should take an interest in the spending of the money when it is used to obtain expensive flick knives and other weapons. He states that too many children are growing up with no respect for parents and elders and with none for their own or anybody else's property, a fact which is borne out by the senseless and wanton damage caused to buildings in course of erection, street lamps, signs, public lavatories, etc., which in some districts has necessitated special police patrols for several weeks. He adds that older people who witness such acts are often afraid to remonstrate or interfere because of threats of personal violence from these youths. Mr. Pitt suggests that it would be of assistance if the courts would make offenders pay full costs both of the damage and of bringing them to court, and, in breaking and larceny cases, full restitution to the injured person.

REPORT OF GLAMORGAN SCHOOL MEDICAL OFFICER

In his report for 1958 the principal school medical officer for Glamorgan, Dr. W. Evan Thomas, refers to the provision of education for handicapped pupils as one of the main objectives of the school health service. He points out that in recent years there has been a trend from using residential schools to allowing the children to remain in the ordinary school if at all possible. Attendance as a day pupil in a special school is regarded as preferable to residential care but in a county like Glamorgan the numbers of handicapped pupils make it impracticable for special schools to be located so that all the children can attend daily. Not only are ideas changing as to how handicapped pupils are to be dealt with, but the types of such children are also changing. For instance, in recent years the incidence of tuberculosis infection has fallen and, therefore, it can be anticipated that there will be fewer cases of tuberculous meningitis, and one cause of deafness in children will consequently be reduced. One feature, however, which is causing concern is the fairly frequent association of a low level of intelligence with a physical handicap.

Another matter of general interest in this report is in the treatment of maladjusted pupils. As a result of discussions between the regional hospital board and the county council it has been agreed that the general plan of the future should be that the board would be responsible for the appointment of psychiatrists and psychistric social workers whereas the local authority would provide the educational psychologists. Wherever possible the child guidance clinics would be held in local authority clinics.

COUNTY BOROUGH OF HALIFAX: REPORT TO THE JUSTICES

Mr. T. E. Brown, clerk to the justices, reports that, in the adult court, a total of 234 indictable offences and 853 non-indictable offences, were heard by the justices during the year ending September 30, 1959. Of the non-indictable offences, 102 were for careless driving and six for driving or being in charge while under the influence of drink. Of the indictable offences, 99 were committed for trial, an increase of 28 over the previous year. Fines, fees and refunds collected rose by £168 11*s.* over the previous year to a total of £6,656 19*s.* 1*d.* and the amount of fines outstanding has also risen, to £2,906 19*s.*, an increase of nearly one-third.

Mr. Brown makes some mention in his report of the effect of attachment orders under the Maintenance Orders Act, 1958. During the year 58 attachment orders were made of which the majority are working satisfactorily, but no less than 20 such orders have had to be discharged owing to the defendants ceasing to be employed by the employer named in the order, and in some of these cases the change was made with the deliberate intention of avoiding payment. Employers, Mr. Brown reports, are, on the whole, co-operating well. He suggests that it is still too early to say that the new procedure is even a partial solution to the problem of making unwilling offenders pay, but that it has certainly achieved its object of keeping a lot of them out of prison.

Included in the report is a list of appeals to quarter sessions against the decisions of the magistrates, and it is perhaps worthy of note, in view of recent complaints that magistrates are too lenient in sentencing for traffic offences, that in the five appeals under this head, involving 14 charges, some part of the sentence for no fewer than nine of these charges was reduced by the higher court.

CORRESPONDENCE

The Editor,
Justice of the Peace and
Local Government Review.

SIR,

"CLIENTS"

In commenting on the Essex Probation Report at p. 677 *ante*, you draw attention to the use, by Mr. Eshelby of the word "client" for "probationer." You speak of the "absurd inappropriateness of the expression." Many probation officers and other social workers would agree that the word "client" is far from ideal, but you may care to consider the alternatives. If "client" is inappropriate, so also is "probationer." Many of those with whom a probation officer deals are on probation—many are not. Are these also to be called "probationers"? If not, how are they to be known? What of those subject to supervision orders, and of those who seek the probation officer's help in voluntary supervision and matrimonial conciliation? Are these to be known as supervisioners, voluntary supervisioners and matrimonialers? Alternatively, for the sake of style, the former group might be known as supervisors!

It is true to say that probation "involves a personal relationship," but it is, of course, increasingly apparent that one of the greatest values of the probation relationship lies in the fact that it is, or should be, a professional relationship. If the relationship becomes too personal, the client (or what you will call him) will, almost certainly, lose the freedom to express hostile feelings and attitudes.

In short, if the use of the word "client" involves the recognition of probation as a professional service, it is to be welcomed.

Yours faithfully,
A. F. HUGHES.

57, Park Lane,
Croydon, Surrey.

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

"CLIENTS"

With reference to your remarks on the Essex Probation Report at p. 677 *ante*, deploring the use of the word "client" may I point out the probationers do not necessarily comprise the major part of a probation officer's case load. The case load of all probation officers consists of matrimonial cases, those who are subject to after-care following prison, borstal or approved school, those who are the subject of supervision orders, voluntary supervision cases and a great variety of people who come to the probation officer with their problems and who are placed under the heading of kindred social work. A moment's reflection will surely reveal the inappropriateness of calling all these cases probationers.

The word client has been used for some time now by professional social workers and I think it is here to stay for some years at least.

Yours faithfully,
MISS M. L. MARTIN,
Probation Officer.

Essex Probation Committee,
Hurlingham Chambers,
Clacton.

[We thank our correspondents for their letters, but adhere to our previously expressed opinion—that the word "client" is inappropriate for social work as it implies a professional or commercial relationship and not a personal one.—*Ed., J.P. and L.G.R.*]

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

MAINTENANCE ORDERS ACT AND RULES, 1958

Some little time ago you invited clerks to justices to indicate how the provisions for attachment of earnings was working out in practice.

I must say that in the courts for which I am clerk our early experience was disappointing. As more orders have been made the result has been much more encouraging and helpful.

From our experience a clear pattern seems to emerge which can be set out as follows:

(*a*) The most satisfactory order are those made against a man who has a good and fairly lengthy work record with a large or fairly large firm;

(*b*) Orders made against very small firms are not often very successful.

(*c*) It is useless making an order against a man who either has a poor work record, is constantly changing his job or who is in a job which he can change easily—*e.g.*, a builder's labourer.

Legislation has not yet attempted to solve the problem of extracting money from the gradually increasing numbers of "workshys" for whom prison has no terrors and who fully intend that their wives and (generally) very many children shall be maintained by the taxpayer. Perhaps, one of these days, legislation will face the problem squarely.

I doubt whether many clerks believed that the Act would result in many orders being transferred from the magistrates' court to the High Court. Recently such a transfer has resulted in a complainant receiving £1,000 arrears from her husband who was a man of some means (with a bank account and some shares). The arrears had accumulated over a long period whilst the husband was abroad and he would have been delighted to serve six weeks' imprisonment for them.

Yours faithfully,
ALBERT PLATT,
Clerk to the Justices.

Ashton-under-Lyne,
Lancs.

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

ATTACHMENT OF EARNINGS ORDERS

You asked recently for observations on how the Maintenance Orders Act, 1958, part II, was working. It is working well here and a number of attachment orders have been made. The magistrates have welcomed the Act and, far from being unwilling to make attachment orders, they are anxious to do so whenever possible and I often feel that they would like to do so even in cases where the defendant has not got into arrear through his own fault. In my experience also, the Act works well and is a great benefit to wives.

Yours truly,
Clerk to the Justices.

The Editor,
Justice of the Peace and
Local Government Review.

SIR,

THE ROADS OF ENGLAND

Your much publicized suggestion at p. 689, *ante*, that in "parking" cases "the court should refuse to accept a plea of guilty by letter, and should require the personal attendance of every defendant" appears to have been made with less than your usual thought.

I share your concern about obstruction of the highway—though not your apparent obsession with London—but is this really a practicable way of dealing with this problem?

I hope that one day we shall have the pleasure of seeing you in Scarborough. I hope, further, that your visit will not result in a summons for causing an unnecessary obstruction, or overstaying the 20 minute waiting limit. But if you were to be so unfortunate, would you consider it reasonable that you should be required to undertake a round journey of 500 miles for a five-minute hearing in court?

I submit that the public interest would be better served if the £10 (at least) that such a journey would cost you were diverted direct to public funds by way of a fine in your absence, and you should be left to get on with your work during the two full days that would be occupied by such a journey.

Yours faithfully,
MEREDITH WHITTAKER,
Chairman.

Scarborough Borough Justices.

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

"STILL WATERS"

I have just read the article under this head at page 498 *ante*. It occurs to me that your contributor has overlooked the important point that even in this modern age the female looks to the male for her support and that it is only when such support is lacking that she turns to crime.

It follows that in a great many cases the male will start his criminal career by obtaining money and the necessary perquisites to prove his outward prosperity in order to impress the woman in his life. The female, on the other hand, will be content to receive the luxuries showered upon her without inquiring too closely whence they came. In this way she will remain on the criminal fringe without becoming personally involved.

There must surely be many wives, sweethearts, mothers and sisters who have no need themselves to embark upon a criminal career because their menfolk provide for them so assiduously.

Yours faithfully,
P. J. GADSDEN.

5 & 6 Rowcroft,
Stroud.

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

CONSENT TO A PROBATION ORDER

I am writing with reference to the comments expressed under the heading of "Magisterial Law in Practice" at p. 609 *ante*. These relate to a report given in *The Yorshire Post* on the court appearance of a youth charged with being in possession of an offensive weapon, and with having bought intoxicating liquor for his own consumption when under the age of 18 years.

It was enlightening to read your observations regarding the maximum possible sentence for the former offence, but my primary interest was in the second paragraph, where the inference was drawn that the defendant and his father appear to have left until too late their protest against the imposition of a probation order.

I have already been acquainted with the circumstances of this particular occurrence, and there is no doubt that full regard was paid to the provisions of s. 3 (5) of the Criminal Justice Act, 1948, and that the defendant did express his willingness to comply with the requirements of a probation order. I should, however, have thought that the mere fact that protests were made at the time of the actual hearing would in itself indicate an ignorance on the part of the defendant as to the legal aspects of such a decision. As a probation officer myself, I believe that the element of consent implicit in the making of a probation order in cases where the defendant is over the age of 14 years is a fundamental factor in exercising effective supervision. I have, not infrequently, encountered considerable resentment on the part of probationers who have found subsequent to their court appearance that they had not been obliged to accept such supervision. Such resentment would be particularly justifiable in the case quoted, when one considers that as an alternative to the use of probation, the maximum fine that could have been imposed was £1, this being the first conviction for such an offence.

If this argument is accepted, there would appear to be a need for courts to recognize that it is incumbent upon them to satisfy themselves not only that the defendant has expressed his token agreement, but also that he fully understands the principles underlying the making of a probation order, and that he is under no compulsion to agree to such a contract.

Yours truly,
K. G. MARTINDALE,
Probation Officer.

Derbyshire Probation Area Committee,
Community House, Derby.

[We are indebted to our correspondent and can say that we agree wholeheartedly with the last paragraph of his letter. We assumed from the report that the effect of a probation order had been explained to the defendant and his father and since, apparently, no protest was made then, it was for that reason that we described the protest as "too late." We were not concerned with the wider question of whether in such a case a probation order was the most suitable method of dealing with the defendant.—*Ed., J.P. and L.G.R.*]

"BOYS WILL BE BOYS"—I

When we were very young, the late George Bernard Shaw was invited to speak to an association in which we were interested, on the subject of parliamentary institutions. The great man duly appeared; on being asked to preface his address with a title, he named it *In Praise of Guy Fawkes*.

That episode occurred some 30 years ago, when revolt against the established order was in its infancy. The great recession in the United States had led to repercussions in Europe; the wave of poverty and unemployment had engulfed millions of homes, and on the crest of that wave Adolf Hitler was to sweep into power. Benito Mussolini was strengthening his grip upon the Italian nation; Antonio Salazar was establishing himself, unopposed, as dictator in Portugal, and Francisco Franco was to emerge victorious from the civil war in Spain. Josef Pilsudski already wielded despotic power in Poland; Joseph Vissarionovich Stalin had consolidated the hold of the communist system upon the vast territories of the Soviet Union. The uneasy balance of power that had subsisted since 1919 rocked on its foundation, tottered and collapsed. Six years of war destroyed dictatorship in Germany and Italy, weakened democracy in France, and drove Central and Eastern Europe into the Russian orbit. The constitutional monarchies in Britain, the Low Countries and the Scandinavian States came through their democratic traditions unimpaired; in the United States republican institutions seemed only strengthened by the testing fires of war. Rising standards of material prosperity, popular education and social welfare appeared to herald the approach of the millenium.

But something has gone wrong. Crime in Britain has increased, as compared with pre-war years, particularly crimes of violence. An altogether disproportionate rise in delinquency has occurred in the age-group from 16 to 21; and an increase only slightly less startling among those from 21 to 30. Between 1956 and 1958 the male borstal population has increased by 57 *per cent*. Many young people are sullen and rebellious; the *gaucherie* and exhibitionism inseparable from adolescence take on more and more anti-social forms—notwithstanding that, or perhaps because, they have more money in their pockets than ever before.

Whether Guy Fawkes has become the hero of recalcitrant youth, or whether the first week in November has achieved significance because it is for millions in the communist world what July 14 is for the French, we cannot tell; but November 5, in Britain, has become the most enthusiastically celebrated festival of violence in the calendar. This year's is said to have been the rowdiest in history. In and around Trafalgar Square and Piccadilly misbehaviour of various kinds, from throwing fireworks to assault with offensive weapons, was dealt with in 156 charges at Bow Street court; "aggression and brutality" (*The Times*, November 7), on the part of youths between 17 and 22 occurred in Bristol; and scenes of hooliganism, leading to arson and at least one death, took place at Liverpool, Birkenhead, Manchester, Barnsley, Barrow, Redcar, Glasgow, Edinburgh, Brighton, Lewes, Oxford and Cambridge.

Regarded in the proper historical perspective, such anti-social activities, and others graver still, seem for the most

part to be perpetrated by adolescents who were born and lived their most impressionable years during the second world war, when their fathers were absent on service, their mothers out to work, their homes in many instances broken up. Boys and girls who were born between the latter part of 1939 and the middle of 1945 form precisely that group whose delinquency is worst—the 14 to 20 year olds. The second worst group of offenders is that aged between 20 and 30—those, in fact, who grew up in the period from 1929 to 1939, when the dictators were having things all their own way, decent human values were being trampled upon abroad, and unemployment, poverty and the spectre of war at home led a succession of weak governments to follow the ignoble policy of "appeasement" and to reject the British tradition of beating the bully and helping the underdog. With such examples before them at the age when character is made or marred, is it surprising that these two principal age-groups account for the greater part of the increase in crime?

But (it will be said by the advocates of stern repression) this is all sentimentality, a mere finding of excuses for original sin. Before we get on to more controversial matters, let us look at the evidence elsewhere.

In New York this summer teenage gang-fights resulted in 11 young persons and an undisclosed number of adults being shot, knifed or beaten to death (*The Times*, November 10). The recent wave of youthful crime is so shocking that suggestions have been made that parents should be charged with their children's offences, and that the indictable age be lowered to 15. Young people of low mentality, who covet a status they will never attain by fair means, join gangs; "they want to be 'somebody,' they have to 'belong.' They enjoy the thrill of publicity, for notoriety's sake." It is safer to be in the gang than out; the conscripts are organized in clubs for "kids" (11 to 13), "juniors" (13 to 14), and "seniors" (15 to 18). There are auxiliaries for girls (called "debs") who carry the guns and knives for the boys on the way to a fight. Morals are lax, and the consumption of cheap wine and liquor is high. "Usually a gangster retires from these clubs at 18, but often brings in a younger brother to take his place." Of those who "retire" at the age of 18, 70 to 75 *per cent.* go straight, 20 *per cent.* become drug addicts or alcoholics, and five *per cent.* criminals. Of New York's 1,200,000 children, 37,515 are registered with social agencies as "problem" or delinquents. About 20,000 families are responsible for 75 *per cent.* of teenage delinquency.

What is New York doing about it? The press continues to ask for a bigger police force; social workers say that their funds are too small "to get these youngsters to go straight and provide them with other (*sic*) means of recreation." Some people maintain that it is time for firm action, and that the courts have been too lenient. Knowing how American children are indulged, we doubt whether the "firm action" will amount to very much.

New York, of course, is an immense city, and the United States are the melting-pot of many races. By contrast let us look at Sweden, a paradise of social security, a pattern of public hygiene, a hive of industry, a model of prosperity, a bulwark of neutrality in Europe, unscathed by war for 150 years. Yet (says *The Daily Telegraph*, November 25,) "Sweden's teddy boys have gone on four wheels, adding a new word to the language and posing new problems for the police." The new word is *raggare*, implying toughness and daring. They ride round in renovated American cars, with gang-names painted over number-plates. "In droves of 50 cars or more they swoop down on different towns, startle the local inhabitants, clash with police and withdraw." One town, in Sweden's prettiest province, has refused to hold the international motor-cycle *Grand Prix* any more, because drunken *raggare* and their screaming girls have fought there with foreign visitors.

We hope next week to give further instances from abroad, and to draw some pertinent conclusions. A.L.P.

MAGISTERIAL LAW IN PRACTICE

East Anglian Daily Times. November 13, 1959.

AIRGUN TESTED IN COURT

"Not Lethal" was the Lowestoft Decision

After an airgun had been tested in court at Lowestoft yesterday, a summons against Stanley John French Gooderham, shopkeeper, of Tonning Street, Lowestoft, accusing him of selling "a certain firearm" to a boy, aged 14, was dismissed.

The chairman (Mr. William Richards) said that they accepted Mr. Gooderham's evidence, on seeing it borne out by the test, that the airgun was not a lethal weapon.

Mr. Gooderham said: "This type of airgun would not kill a sparrow at 15 yards."

Chief Inspector W. A. Moore said that the prosecution held that the airgun was a lethal weapon.

A dictionary was brought into court and the magistrate's clerk (Mr. J. N. Martin) said that it defined "lethal" as "designed to cause death."

"Glorified Toy"

Mr. Gooderham said that the airgun was a "glorified toy" used by children to shoot darts or pellets at an indoor target.

Mr. Martin said that it was illegal to sell "lethal weapons" to young people under 17.

A piece of three-ply wood was placed on the court floor and P.C. D. Green, from about a foot away, fired a pellet which became embedded in the wood, and a dart which penetrated it.

Chief Inspector Moore asked if a pellet would not seriously injure a child if it hit him in the face and Mr. Gooderham replied, "So would a pea shooter."

Restrictions on the purchase and possession of firearms by young persons are contained in s. 19 of the Firearms Act, 1937. Subsection (1) of that section reads: "No person under the age of 17 years shall purchase or hire any firearm or ammunition and no person shall sell or let on hire any firearm or ammunition to any person whom he knows or has reasonable ground for believing to be under the age of 17 years."

Unlike the following subsections, the phrase "any firearm or ammunition" is not qualified by the words "to which part 1 of this Act applies," and it follows that for the purposes of s. 19 (1) we must look to the definition of "firearm" in s. 32 of the Act, and it is there defined as: "any lethal, barrelled weapon of any description from which any shot, bullet or other missile can be discharged . . ."

With respect to an airgun, the only difficulty would be the word "lethal." We would suggest that the dictionary definition "designed to cause death" was far too narrow in the circumstances. In *Read* v. *Donovan* (1947) 111 J.P. 46; [1947] 1 All E. R. 37; the Divisional Court decided that a lethal weapon means a weapon capable of causing injury. The Lord Chief Justice, in delivering the unanimous decision of the Court, said: "If a weapon is a lethal weapon, which means a weapon capable of causing injury, and if such a weapon is barrelled, and a shot, bullet or other missile can be discharged from it, it is a firearm . . . The intention of the manufacturer or designer of the weapon is immaterial: the question simply is whether the weapon is capable of inflicting harm." We would submit that there can be no doubt that an airgun, firing a pellet which becomes embedded in three-ply wood and a dart which penetrates it, is "capable of inflicting harm."

BOOKS AND PAPERS RECEIVED

(The inclusion in this feature of any book or paper received does not preclude its possible subsequent review or notice elsewhere in this journal.)

Affiliation: Law and Practice. Supplement to October 31. By G. S. Wilkinson. London: Solicitors' Law Stationery Society Ltd. Gratis.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Acquisition of Land—*Sale of superfluous land compulsorily purchased—Pre-emption—Conditions of sale.*

A local authority acquired land by compulsory purchase and prepared a building programme of which plans have been made. The council finds that the land can be developed by private building and are now contemplating selling the land for such development.

1. Must the council offer the whole of the land to the owner from whom they purchased it in the first instance ?

2. Can they sell part and retain the other part for their own development ?

3. Can they impose a condition in either case that the land must be developed strictly in accordance with the plans they have prepared ?

4. Have they power to sell at a profit if the competition for the land is such that a profit might well be made ?

BANIF.

Answer.

1. They are not obliged to do so.

2. Yes, subject to s. 165 of the Local Government Act, 1933.

3. Yes: *see Davis* v. *Leicester Corporation* (1894) 70 L.T. 599; *Holford* v. *Acton U.D.C.* (1898) 78 L.T. 829.

4. Yes.

2.—Children and Young Persons—*Appeal—Approved school order—Appeal heard when defendant is over* 17*—Powers of quarter sessions.*

Under s. 66 (1) of the Children and Young Persons Act, 1933, a young person aged 16 years 11 months was brought before a juvenile court and that court then made an approved school order.

The young person appealed against that decision in accordance with the provisions of ss. 101 and 102 of the 1933 Act, and ss. 83 and 84 of the Magistrates' Courts Act, 1952, and the appeals committee of quarter sessions then dealt with the matter in accordance with s. 1 of the Summary Jurisdiction (Appeals) Act, 1933.

At the time of the hearing of the appeal, the young person had passed his 17th birthday, and in fact the appeals committee dealt with the matter by allowing the appeal, but making no further order, so that the original supervision order remained.

But the question arose whether the fact that the young person was now over the age of 17 prevented the appeals committee from exercising any of the other options in s. 66 (1) such as committing to the care of a fit person.

The approved school order itself is expressly "saved" by the case of *Rugman* v. *Drover* (1950) 114 J.P. 452; [1950] 2 All E.R. 575, and the question really is whether the same reasoning as was adopted in that case in regard to a sentence which had actually been imposed at a time when the young person was of such an age as to be amenable to it, can apply also to a decision which in fact was not made, but could have been made. To put the matter in another form, the question is whether the appeals committee must deal with the appellant on the basis that he is of the age which actually relates to the day he appears before them, or do they deal with him on the basis that his age is what it was on the day when he appeared in the magistrates' court.

V. NEW HALL.

Answer.

The wording of the decision in the case quoted is in general terms, and having regard to it, and to the wording of s. 31 (1) (*vii*) of the Summary Jurisdiction Act, 1879, as substituted by s. 1 of the Summary Jurisdiction (Appeals) Act, 1933, we are of the opinion that the appeals committee can make any other order which might have been made by the juvenile court when it made its decision.

3.—Husband and Wife—*Separation order—Wife admitted to mental hospital—Sufficiently sane to understand she is receiving money—Can collecting officer pay money to her ?*

A obtained an order for separation against B and B has to pay A (through the clerk of the court) the weekly sum of £3 10*s.* for herself, together with the weekly sum of £1 10*s.* in respect of the child. A has been admitted to a mental hospital and I understand now she is a certified mental patient, but no receiver has been appointed. I also understand that she is quite capable of understanding, among other things, money matters.

If I receive a letter from the medical superintendent to the effect that A is sufficiently sane to understand that she is receiving the money and knows what she is doing and gives me a receipt, would I be safe in paying the money to her ?

HOFOR.

Answer.

It appears, in the circumstances, that the clerk would be safe in paying over the money to the wife, although we think he should come to some arrangement with the medical superintendent so that he could be informed if the wife's condition worsens.

4.—Magistrates—*Jurisdiction and powers—Common assault—Absolute discharge—Authority to bind over, in addition, under s.* 39 (3) *of the Criminal Justice Act,* 1925.

Can a person before a magistrates' court on a charge under s. 42 of the Offences against the Person Act, 1861, be bound over to keep the peace after he has been absolutely discharged in connexion with the offence ? It would seem that the binding over can only be exercised in addition to any penalty, and that if no penalty is imposed then there is no power to bind over under this section.

If there is no power in such circumstances to bind over under this section, has the court power, after giving an absolute discharge, to bind over under its common law power (*see* p. 321 *Stone* (1959)) or can such common law power only be exercised if the case has been dismissed ?

KARINA.

Answer.

In our view the foundation of the court's jurisdiction under s. 39 (3), *supra,* is the conviction of the offender and, after conviction, the power to order him to enter into recognizance exists however the court may have decided to deal with him by virtue of their other powers.

5.—Magistrates—*Jurisdiction and powers—Absolute discharge for common assault—Binding over in addition—Not a disability.*

I am obliged for your answer to my query above and note that in your opinion the court would have power to bind over the defendant under s. 39 (3), even though this was not "in addition to" a penalty.

It does occur to me, however, that if the binding over comes within the definition of a "disability" then s. 12 of the Criminal Justice Act, 1948, would be a bar to the exercise of the power of binding over.

I regret troubling you further in this matter, but as the chairman of my bench has specifically asked me to clear up any doubt as to the power of binding over, I shall be very grateful if you will confirm that, in your view, the binding over is not a disability.

The above is, of course, on the assumption that the court has given the defendant an absolute discharge.

KARINA AGAIN.

Answer.

By his recognizance the person bound is merely required to keep the peace or to be of good behaviour and we do not consider that it can be said to be a disability, within the meaning of s. 12 (2) of the Criminal Justice Act, 1948, to be required so to behave oneself.

6.—Magistrates—*Jurisdiction and powers—Summons served—No appearance by defendant—Hearing adjourned—Notice of adjournment not served—Subsequent issue of warrant.*

A defendant is summoned for a number of summary road traffic offences, and the provisions of s. 1 of the 1957 Act are applied. The summonses are served personally. The defendant fails to appear or communicate with the court, which thereupon adjourns the informations as it feels that the defendant should do so. A notice of adjournment is given to the defendant by registered post, but this is returned by the Post Office marked "Gone away" and it is not possible to trace the defendant by the date of the adjourned hearing. The question then arises as to how the matter should proceed. I am of opinion that a warrant cannot be issued on any of the current informations either under s. 15 (2), as the defendant has not received a notice of the adjournment, nor under s. 1 as none of the informations refer to an indictable offence. It would appear that the only methods would be either: (*a*) to further

adjourn and endeavour to trace the defendant so as to serve a notice of the further adjournment, and if this is successful and he still fails to appear or communicate with the court, a warrant could then issue under s. 15, or (*b*) to withdraw the information in respect of one of the offences, and to lay a fresh information on oath in respect of this offence, and apply for a warrant under s. 1, at the same time adjourning all the other informations *sine die*. Do you agree? If method (*a*) is adopted, and by the date of the further adjournment the defendant is still untraced, should not method (*b*) be adopted if the six months time limit is running out?

J. NAMTO.

Answer.

The fact that the notice of adjournment has for this purpose not been served has the same effect as if the summons had not been served. We agree that a fresh information can be laid and sworn and a warrant issued under s. 1 of the Magistrates' Courts Act, 1952. If the time limit allows, there is no reason why there should not be a further adjournment, as suggested in the question under (*a*).

7.—Probation—*Several offences—One or more probation orders?*

It is the practice of some courts when placing persons on probation, to name in the probation order all the offences committed by the offender, where of course there is more than one. There seems some difference of opinion as to whether this is correct procedure and one opinion is that only one particular offence should be mentioned in the probation order and the other offences should be dealt with separately, *e.g.*, absolute discharge, or fine.

ISUNO.

Answer.

We answered a similar question at 117 J.P.N. 679, P.P. 11. If the offences are all of a similar nature, *e.g.*, stealing, a probation order in each case seems appropriate and, as we said in the earlier answer, we think that a separate order is required in each case. If there is one major offence and others of a minor character, it may well be that probation is appropriate for the major offence and that the others may be otherwise dealt with.

8.—Rating and Valuation (Miscellaneous Provisions) Act, 1955, s. 8—*Occasional letting of premises for commercial purposes.*

A scout hut which has heretofore been occupied solely by and for the purposes of a scout group, and has accordingly qualified for a limitation of rates under head (*a*) of subs. (1), has now been let for one day to a merchant for the sale of carpets and household linen. It is understood that a payment of £5 was made to the scout group in consideration of this letting. Having regard to the smallness of the hut and the fact that it is not within a shopping area, it might be considered that this payment is excessive viewed as a rent, and could be taken to be a contribution to the group funds. Unfortunately the council cannot turn a blind eye to the matter, because complaints have been made by local tradesmen who refer specifically to the fact that the building is not rated for commercial purposes. Is an isolated letting of this nature for commercial purposes sufficient to take the premises out of the section, (*a*) for the current year, and (*b*) for subsequent years? Would the position be different if such a letting were repeated, say, once in each rating year?

BEDASA.

Answer.

We do not consider that this letting deprives the organization of its character of being "not established or conducted for profit," or that it would lose that character by a similar letting in later years.

9.—Rating and Valuation—*Rate recovery proceedings—Expenses of rating authority in obtaining distress warrants.*

The council are considering the question of applying to the justices for reasonable costs incurred in obtaining distress warrants against all defaulting ratepayers. The sum they think reasonable is in the range of 5*s.* to 7*s.* 6*d.* for each summons. The authority for the granting of such costs appears to be the first part of s. 1 of the Distress for Rates Act, 1849. When s. 13 (4) of the Rating and Valuation (Miscellaneous Provisions) Act, 1955, refers to the words "reasonable charges" this seems to be the latter part of the section, about taking, keeping, and selling of the distress; in the subsequent Distress for Rates Order, 1956, only costs for these purposes are dealt with. The order states, however, that the words "sum due" means the sum in respect of which the warrant is issued (including the costs incurred in obtaining it). It is submitted that the justices still have a discretionary power under the first part of s. 1 of the Act of 1849, to allow a reasonable sum to the rating authority for costs and expenses which have been incurred in obtaining the distress warrant. It is believed that many rating authorities make application for such costs and obtain the justices order for payment. Do you agree that the justices have the power to allow a reasonable sum in respect of these costs and expenses?

EBORA.

Answer.

We agree that discretion is still exercisable under the first part of s. 1 of the Act of 1949: *see* P.P. 12 J.P.N. 361, where we answered a similar question in a narrower context.

10.—Road Traffic Acts—*Insurance—Liability of insurance company in respect of pillion passengers.*

A is the owner-driver of a solo motor cycle which he has insured in accordance with the requirements of the Road Traffic Act, 1930, in respect of "third party" risks. He gives B a ride on the pillion of the machine and during the journey A turns a corner too fast and B is thrown from the machine and injured. There is no other vehicle involved.

B makes a claim against A in respect of injuries received and the latter accordingly informs his insurance company that such a claim has been made against him. The insurance company states that the pillion passenger was riding the machine at his own risk and that they cannot in any way be held reliable for injury received by B whilst a pillion passenger on the machine. It is pointed out that the policy does not include such a proviso and that in any case the Road Traffic Act, 1930, makes it quite clear that any proviso which is contrary to the Act is in any case null and void. The insurance company is adamant that they can in no way be legally or financially liable for any act of their client A in respect of any claim made by B whilst a pillion passenger.

As this proposition appears to be contrary to the provisions of the Road Traffic Act, 1930, in respect of "third party" insurance, will you kindly inform me if the insurance company would be right in their claim of non-liability for their client's acts in respect of B and, if so, will you please inform me of the authority on which such an answer is based.

I shall be further obliged if you would clarify the point as to whether your answer would be different in the event of the pillion passenger having been the spouse of the owner-driver of the motor cycle.

LOMAN.

Answer.

Section 36 (1) of the Road Traffic Act, 1930, makes it clear that a policy, to satisfy the requirements of the Act, need not cover liability in respect of the death of, or bodily injury to, any person carried on or in the vehicle unless he is carried for hire or reward or by reason, or in pursuance, of a contract of employment. *Gilbert's Motor Insurance*, third edn., at p. 80 states, moreover, that in the case of motor cycles cover for passengers, as an extra, is given only in respect of those carried in a sidecar and not for pillion passengers. A policy limited as the company state would, therefore, not be invalid, and probably the policy in this case was so limited. It would make no difference if the passenger were the spouse of the owner-driver.

11.—Road Traffic Acts—*Registration and licensing—New owner failing to report that he has acquired vehicle—Venue.*

I should be glad of your views on the following set of circumstances in relation to offences contrary to reg. 9 (2) of the Road Vehicles (Registration and Licensing) Regulations, 1955.

A lives in an urban district and owns a car which is registered with the county council. The car is sold to B who lives in a county borough in the same county. B fails to comply with the requirements of the above regulation, *i.e.*, to insert his name and address in the registration book and send it to the council where the car is registered.

I should be glad of your opinion as to the proper venue for the hearing of proceedings against B.

J. CIVIC.

Answer.

This is an offence against s. 25 (4) of the Vehicles (Excise) Act, 1949, and the venue is governed, therefore, by s. 284 of the Customs and Excise Act, 1952.

There is jurisdiction, therefore, under s. 284 (1) (*a*) in the court sitting for the place where B lives, *i.e.*, the county borough, or, under s. 284 (1) (*c*), in the court sitting for the place where the county council's offices are, to which offices B should deliver the registration book with his name and address inserted in it.

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